In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 122

BILLIE LOUISE HARRIS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 166-171) is reported at 211 F. 2d 656.

JURISDICTION

The judgment of the Court of Appeals was entered on April 1, 1954 (R. 172) and a petition for rehearing was denied on April 23, 1954 (R. 173). By order of Mr. Justice Minton, the time for filing the petition for a writ of certiorari was extended to and including June 7, 1954, and the petition was

filed on that date. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the erroneous admission in evidence of a co-defendant's confession constituted reversible error as to petitioner where the court instructed the jury meticulously both at the time of admission and in its final charge that the confession was admissible only against the co-defendant.

STATEMENT

Following a trial by jury in the United States District Court for the Northern District of Illinois, petitioner was convicted of having on November 25, 1952, unlawfully transported from Kansas City, Missouri, to Chicago, Illinois, a Chevrolet four-door sedan, knowing that it had been stolen, in violation of 18 U.S.C. 2312 (Count 1, R. 3-4, 146). Her co-defendant, Clifford Bauer, was convicted of having unlawfully transported said vehicle on or about January 17, 1953, from Chicago, Illinois, to Indianapolis, Indiana (Count 2, R. 4, 147).[1] Petitioner was sentenced to a term of imprisonment of two years and six months (R. 3). On appeal, the judgment was affirmed (R. 172).

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[1] Petitioner and Bauer were jointly indicted in count 2 (R. 4), but at the end of the Government's case and on its motion, this count was dismissed as to petitioner (R. 8).

The evidence may be summarized as follows:

In accordance with her usual custom on weekdays, Mrs. B. V. Mishler of Kansas City, Missouri, parked her 1951 Chevrolet sedan about 7:50 A. M. on November 25, 1952, in her usual parking lot and went to work. Although she took the car keys with her, the car could be operated without such keys. Within a period of about five minutes a woman, whom the parking lot attendant did not know personally but whom he positively identified as petitioner, got into the car. After telling him that the car belonged to her sister and that she would return for her sister at 5:00 P. M. when her sister finished work, she drove the car out of the lot before the attendant "could say anything." Mrs. Mishler did not know petitioner nor did she give anyone permission on that date to use her car. When Mrs. Mishler returned from work at 4:45 P. M. and found the car gone, she reported the loss to the police. (R. 10-13, 14-20, 23.)

On November 28, 1952, petitioner drove the car to Chicago, where she lived at the Devonshire Hotel (R. 70, 117, 120). At the hotel, she became acquainted with co-defendant Bauer, a bellhop (R. 92, 100, 121). On Sunday, January 25, 1953, Bauer's then common-law [2] wife, Elaine, called the F. B. I. at Chicago and advised them that petitioner, who was then living in an apartment on N. Clarendon, had a car stolen from Kansas City, Missouri (R. 46, 108, 111). The F. B. I. in turn

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[2] They were married on April 11, 1953 (R. 108).

called the Chicago police (R. 38, 45, 59, 74, 75) who found the car in that area and placed it under observation (R. 35). About 8:30 that evening petitioner and Bauer got into the car. After ascertaining petitioner's identity, the police questioned her as to the car's ownership. First she claimed the car belonged to her, but when asked to produce her registration card, she said that the car belonged to a friend who lived in Kansas City, Missouri. (R. 35-36, 46, 53-55, 93-94, 123.) The police then arrested Bauer and petitioner and took them to the Chicago police station (R. 37, 40-41, 45, 46, 55, 56, 93, 123). The defendants remained in the custody of the Chicago police until 10:30 A. M., Wednesday, January 28, 1953, when they were turned over to the F. B. I. (R. 42, 50, 83). During that time, no charge was filed against petitioner or Bauer (R. 49, 50). About 1:30 P. M. on January 28 they were taken before the United States Commissioner (R. 50, 79, 84, 95).

While in the custody of the Chicago police, petitioner and Bauer were questioned by the Chicago police and by the F. B. I. on Monday, January 26, Tuesday, January 27, and Wednesday, January 28 (R. 37-45, 47, 48, 51-52, 57, 58, 62-65). On January 26, 1953, petitioner signed a statement for the F. B. I. in which she denied any knowledge that the car was stolen. She said that one Anthony Morino had loaned her the car for her use indefinitely on November 28, 1952, in Kansas City, Missouri, where she was visiting from November 22

to November 28, 1952. When she returned to Missouri on January 8 and 9, 1953, she saw Morino and he told her that she could still keep the car. (R. 65-70.) Her subsequent testimony at the trial was to the same effect with the additional statement that Morino told her that he had repossessed the car after the owner had defaulted on payments to him (R. 117-121). An F. B. I. investigation in Kansas City, Missouri, failed to locate a Tony Morino (R. 84-85, 86-88).

On the afternoon of Tuesday, January 27, 1953, not in petitioner's presence, Bauer who had previously denied knowledge that the car had been stolen admitted such knowledge (R. 42-45, 51, 52, 55-56, 59, 64, 71-76, 79). On the morning of the 28th, after petitioner and Bauer were turned over to the F.B.I. and before they were brought before the Commissioner, Bauer signed a written statement reading in part as follows (Gov. Ex. 7, R. 78):

> I met Louise Harris around the early part of December. I knew her casually during the month of December. She had a 1951 Chevrolet, green in color, 1953 [sic] Missouri plates, in her possession at the time that I met her. She later told me she stole the 1951 Chevrolet in Missouri before she came to Chicago. She went back to Missouri between January 4, 1953 and January 16, 1953. She returned on the 16th of January.
>
> On January 18, 1953 I accompanied Louise Harris in the 1951 Chevrolet, green in color,

> 1953 Missouri license, to Indianapolis, where we stayed at the Harrison Hotel in Indianapolis, returning to Chicago on the 21st of January.
>
> I had full knowledge that the car was stolen.
>
> * * * * *

On the witness stand, Bauer repudiated his written confession saying that he signed the statement and made the admissions to keep the police from "bothering [his] wife" who, he said, was in a bad nervous state (R. 98-100).

At the time of the admission of the written statement, the court instructed the jury that (R. 77):

> it may be received against the defendant Bauer, and it is not admissible as against the defendant Harris, so just disregard it as to the defendant Harris.

On other occasions, the court instructed the jury that conversations which took place out of the presence of petitioner were not admissible as against her (R. 56, 64).

In its final charge to the jury the court said in part:[3]

> The statement signed by the defendant Clifford Bauer, which was received in evidence,

[3] The final charge to the jury does not appear in the record. We are filing with the Clerk a portion of the charge, which, the United States Attorney for the Northern District of Illinois advises us, is "taken from the master file of the Court Reporter's records, the original of which has been approved by the Judge and filed in the Clerk's office."

was received only against said defendant Clifford Bauer. It was not received as against the other defendant, Billie Louise Harris, and as to said other defendant, Billie Louise Harris, should be completely disregarded.

The statement signed by the defendant Billie Louise Harris, which was received in evidence was received only against said defendant Billie Louise Harris. It was not received as against the other defendant, Clifford Bauer, and as to said other defendant Clifford Bauer should be completely disregarded.

The jury is instructed that statements made by another person, outside of the presence of a defendant, are not evidence as to the guilt or innocence of that defendant. The jury is further instructed that any statements made orally or in writing by the defendant Clifford Bauer or any other person, at a time or times when the defendant Billie Louise Harris was not present, must be completely disregarded by the jury in arriving at its verdict as to Billie Louise Harris.

ARGUMENT

There is no merit in petitioner's sole contention (Pet. 7-10) that the admission in evidence of Bauer's confession constituted reversible error as to petitioner, even though such evidence was admitted subject to repeated and emphatic instructions to the jury that it was not to be considered

against petitioner. Since the confession was properly limited in its effect as evidence it is to be presumed that the jury followed the court's instructions. The presence of these repeated instructions distinguishes this case from *Anderson* v. *United States,* 318 U.S. 350, upon which petitioner relies (Pet. 8-9). In that case, the final charge to the jury lacked the limiting instructions and it was this omission which this Court regarded as significant when it said (*id.* at 356-357):

> * * * while the trial judge appeared to admit the confessions "only to be used against the persons who made them," his charge bound the jury to no such restricted use of the confessions. On the contrary, from what the trial judge told them the jury had every right to assume that in ascertaining the guilt or innocence of each defendant they could consider the whole proof made at the trial. * * *

In addition, unlike here, the *Anderson* case, *supra,* involved 20 defendants charged with conspiracy, eight of whom were petitioners in this Court, and of the eight, six had made the incriminating statements in question. Under those circumstances, a limiting instruction, even if given, might well have been deemed difficult for a jury to apply. In the instant case only two defendants, each charged in a separate count for a separate offense were involved, thus making it easy for the jury to follow the judge's clear and explicit in-

structions. The situation is no different from that presented on any joint trial where a statement is admitted against one person alone, and is unaffected by the issue of whether Bauer's confession was valid or invalid, for in either event it could not be used as evidence against the other defendant.

CONCLUSION

The case involves only the application of settled principles and presents no questions requiring further review by this Court. It is respectfully submitted therefore that the petition for a writ of certiorari should be denied.

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